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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,749	03/07/2001	Mingliang L. Tsai	H0001805 (4300)	4760

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EXAMINER	
NOLAN, SANDRA M	
ART UNIT	**PAPER NUMBER**
1772	8

DATE MAILED: 11/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/800,749	TSAI ET AL.	
	Examiner	Art Unit	
	Sandra M. Nolan	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 September 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-40* is/are pending in the application.

4a) Of the above claim(s) *19-23 and 27-40* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18 and 24-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claims

1. Claims 1-40 are pending.

Election/Restrictions

2. Claims 19-23 and 27-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7 (i.e., the response dated 4 September 2002).

3. Applicants arguments in support of their traversal have been considered. However, the restriction requirement is still deemed proper and is maintained.

4. This application contains claims 19-23 and 27-40 drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to any final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Rejections Withdrawn

5. The 35 USC 103 rejections of claims 1-8, 11-16, 18 and 24-26 as unpatentable over Akkapeddi et al (US 6,410,156 B1) in view of Speer et al (US 5,700,554), as set out in section 22 of the 21 August 2002 Office Action (Paper No. 5), is withdrawn in view of applicants' showings in Paper No. 7.

The showings were copies of the assignments of this application and application SN. 09/800,218 (now US patent 6,410,156), which indicate that both are assigned to the same company. Accordingly, the Akkapeddi patent is unavailable as a reference.

6. The 35 USC 103 rejection of claim 9 as unpatentable over Akkapeddi in view of Speer and VeSpeer (US 5,942,297), as explained in section 23 of Paper No. 5, is withdrawn. See section 5 above.

7. The 35 USC 103 rejection of claim 10 as unpatentable over Akkapeddi in view of Speer and Chu (US 5,605,996), as set out in section 24 of Paper No. 5, is withdrawn. See section 5 above.

8. The 35 USC 103 rejection of claim 17 as unpatentable over Akkapeddi in view of Speer and Farrell (US 4,464,443), as stated in section 25 of Paper No. 5, is withdrawn. See section 5 above.

New Rejections

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

What does "reaction product" mean? Please clarify the claim.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

11. Claims 1-4, 6-9, 13, 15-17, 24, and 26 are rejected under 35 U.S.C. 102(a) as being anticipated by Tai et al (EPO 1033080 A2).

Tai teaches oxygen absorptive compositions containing diene polymers (col. 8, lines 7+), ethylene/vinyl alcohol ("EVOH") polymers (col. 13, line 58), and applicants' metal salts (col. 17, line 5 through col. 8, line 10). The ingredients are melt or dry blended (col. 26, lines 48+). Fillers are used (col. 20, line 45). Multilayer films and containers are made therefrom (col. 60, lines 18-19). Oriented films are taught (col. 32, lines 22-29).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tai in view of JP 10287871 (abstract).

Tai is discussed above. It fails to teach the use of clay in its compositions.

JP 10287871 teaches the use of clay in oxygen scavenging systems in packaging for foods ("Use" section).

The references are analogous because they both deal with oxygen scavengers.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the clay of JP 10287871 in the compositions of Tai in order to improve the utility of the films of Tai with foods.

The motivation to employ the clay of JP 10287871 is found in the 'Use" section of the JP 10287871 abstract, where the use of the JP 10287871 clay in packaging for food is taught.

It is deemed desirable to employ clay or other additives that are known to be useful in food packaging in the compositions and films of Tai in order to lower the cost of the final packaging.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tai in view of applicants' admission at page 3, lines 27+ of the specification.

Tai is discussed above. It fails to teach retortable EVOH.

In the specification, applicants have admitted that retortable EVOH is known.

The references are analogous because they both deal with EVOH.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the retortable EVOH taught by applicants' specification as the EVOH in the compositions of Tai in order to produce films and containers that can be retorted.

The motivation to employ the retortable EVOH of the specification is found in the specification at page 3, lines 18-20, where the desirability of such use is taught for pouches and containers for various packaging applications.

It is deemed desirable to employ the retortable EVOH in films so that packaging made therefrom can be retorted to help insure sterile packaging.

15. Claims 11, 12, 18 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tai in view of VeSpeer.

Tai is discussed above. It fails to teach the use of base catalysts in its compositions.

VeSpeer is discussed in section 23 of Paper No. 5.

The Tai and VeSpeer references are analogous because they both deal with oxygen scavenging systems.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the bases of VeSpeer in the compositions of Tai in order to react the by-product aldehydes from the compositions to make them less migratory.

The motivation to employ the VeSpeer bases is found at col. 7, lines 20-28 of VeSpeer, where the immobilization of by-products is taught.

It is deemed desirable to immobililize by-products using the bases of VeSpeer in order to help stabilize the packaging made from the films of Tai.

Reference Cited as of Interest

16. US 2002/0002238 A1 (to Laplante et al) is cited as teaching compositions containing applicants' ingredients. However, as of this writing, none of the related US applications has issued as a patent.

Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.

S. M. Nolan
Patent Examiner
Technology Center 1700

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November 7, 2002